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### **Higher Education As An International Public Good And GATS: A Paradox?**

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## **Abstract**

The reform of higher education in Europe in the wake of the Bologna Declaration can on the one hand be seen as an effort by the European political world to construct some kind of regional public good in this field.

On the other hand the United States and its allies such as Australia and New Zealand are, in the talks of the Millennium Round, trying to bring (higher) education under the rules of the General Agreement on Trade in Services (GATS). This effort reflects the conviction that higher education must be seen as a private good.

The purpose of this paper is to clarify the nature of higher education in terms of the discussion on public good vs private good.

Higher education clearly has public as well as private ingredients. A number of questions can be deducted from this fact.

This paper will try to give the beginning of an answer to these questions.

The structure of the paper is as follows. In the first paragraph a definition is given of international public goods. Higher education is then analysed from the perspective of this definition. The second paragraph considers the European policy towards creating a higher education system in Europe in the framework of a regional public goods approach. Consideration is given to those public and private aspects of higher education which follow from the analysis in paragraph 1. In the third paragraph higher education is set in the framework of the General Agreement on Trade in Services. The fourth paragraph tries to make some concluding remarks about the paradox which is the core issue of this paper.

Keywords: higher education, international public good, GATS, Bologna process

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## Table of contents

- 0. Introduction
  - 1. International public goods
    - a. Higher education as a public good
    - b. Higher education as an international public good
  - 2. European higher education: towards a regional public good?
    - a. The subsidiarity principle
    - b. The 'capture' by the EU
    - c. Open method of coordination
    - d. Higher education not only as a European collective good, but also as a competition instrument
  - 3. Higher education in the framework of GATS
    - a. Introduction
    - b. Public goods, higher education and GATS
  - 4. Concluding remarks
- Literature

## **0. Introduction**

The reform of higher education in Europe in the wake of the Bologna Declaration can on the one hand be seen as an effort by the European political world to construct some kind of regional public good in this field.

On the other hand the United States and its allies such as Australia and New Zealand are, in the talks of the Millennium Round, trying to bring (higher) education under the rules of the General Agreement on Trade in Services (GATS). This effort reflects the conviction that higher education must be seen as a private good.

The purpose of this paper is to clarify the nature of higher education in terms of the discussion on public good vs private good.

Higher education clearly has public as well as private ingredients. A number of questions can be deducted from this fact:

- What is the theoretical framework for this situation especially with a view to regional public goods approach?
- How can the policy approach of Europe, consisting of building a regional public good, be framed in the context of an emerging international market for higher education as fostered by GATS?
- What about comparative/competitive advantage in higher education and its relation to the public goods aspects of higher education?

This paper will try to give the beginning of an answer to these questions.

The structure of the paper is as follows. In the first paragraph a definition is given of international public goods. Higher education is then analysed from the perspective of this definition. The second paragraph considers the European policy towards creating a higher education system in Europe in the framework of a regional public goods approach. Consideration is given to those public and private aspects of higher education which follow from the analysis in paragraph 1. In the third paragraph higher education is set in the framework of the General Agreement on Trade in Services. The fourth paragraph tries to make some concluding remarks about the paradox which is the core issue of this paper.

## **1. International public goods**

The concept of 'international public goods' dates from the end of the previous century and has since then received quite a lot of attention.

Sensu stricto an international public good is a specific kind of public good, a public good being a good that is non-excludable and non-rival in consumption (Matthijs, Naert & Vuchelen, 2001, 53).

Non-excludability means that in principle it is not possible to exclude someone from consuming the particular good.

Non-rivalry means that the fact that one person consumes the good does not prevent another person from consuming the same good.

The consequence of the definition of a public good is that it will not be provided for by private market agents on their own initiative. It will have to be supplied through some form of government intervention. The 'international' aspect then enters the discussion through the geographical aspect of public goods. The reach of a public good determines which level of government (local, regional, national, supranational,) is best equipped to supply the good in question. In the case of international public goods this reach goes clearly beyond the borders of the traditional nation-state. The supply problem must then be solved by international cooperation. In the ultimate case in which the reach covers the whole of the planet the delivery of international public goods has to be catered for on a worldwide basis. These are so called global public goods. A less far-reaching scale leads to the concept of regional public goods.

This definition of public goods leads to problems when confronted with the practice of government intervention. In many cases government intervenes by supplying itself or subsidizing the provision of goods, which do not possess the two above-mentioned characteristics of public goods. The concept of externalities can be called to help here. Private goods can have external (beneficial or bad) effects in consumption. External means that, in the case of beneficial effects, these effects are not considered by the provider of the good (or service) since he receives no compensation for it. This leads to a sub optimal provision, only to be corrected by government intervention. This kind of good is sometimes called a 'merit good', or a 'near (quasi) public good'. As far as the externalities are of the cross-border type the concept of international public goods can be reclaimed (maybe as 'international merit goods')

Sensu largo international public goods, and especially global public goods, have become a symbol, a new paradigm to tackle problems of underdevelopment, poverty and unwanted consequences of globalisation. International public goods are, in this view, considered as a kind of agenda, the realisation of which will help to solve the above-mentioned international problems. We will not pursue this path.

How does higher education relate to this definition of a public good and to what extent can it be considered as a (potential) international public good?

Let us first consider whether higher education can be called a public good in general, and let us then examine the international public good aspect of higher education.

#### *a. Higher education as a public good*

At least three functions can be attributed to higher education. The first one is the teaching function, the second one is the research function and the third one is the service function.

Consider the first function in the light of the two characteristics of public goods. For (non)-rivalry in consumption it can be argued that to a certain degree (capacity of the lecturing room) and for some methods of teaching (lecturing for example) an extra student in the audience does not influence the ability to listen and learn for the other students. On the other hand, as far as teaching staff are needed (which one can doubt for some newer instruction methods involving ICT and self learning), there is certainly an aspect of rivalry in the consumption of teaching services (leading to entry limits in many higher education systems). It will be clear that teaching is a good, which is technically very excludable. It is always possible to make it impossible to attend for people who do not want to pay for the educational services offered.

More fruitful, especially in order to account for the public good character of higher education teaching, is the externalities approach. A well-educated population offers benefits that go beyond the private gain for the individual, in the sense that such a population increases the future growth potential of a nation (although this view is challenged by Wolf (2000)). In this sense higher education teaching is a merit good.

The second function of higher education can be rephrased as the function of producing knowledge.

The question whether knowledge is non-rival is easy to answer. Extra consumers can benefit from the available knowledge without any impediment to other consumers. The marginal cost from an extra individual benefiting from knowledge is zero.

It is harder to ascertain whether benefiting from knowledge is excludable. A large part of knowledge is in the public domain, meaning that it has been made public (for instance, in scientific journals and books) and that everyone can have access to it. Another part of knowledge has also been made public but is under the protection of patents. The use of this kind of knowledge is thus excludable. Yet another part of knowledge has not been made public and remains private (for instance, in the hands of private or military labs) and must, of course, also be considered as excludable.

So again, it is not possible to state that higher education, in its aspect of knowledge creation and production, is a public good, because the non-excludability condition is not entirely fulfilled.

Here again, recourse to external effects can be helpful. It can be argued that excluding people from knowledge, which is technically possible, leads to unwanted external effects. The progress of knowledge will be slowed down by the exclusion. So limiting excludability and opening up knowledge by publicly financing its production would lead to positive externalities. Higher education is a merit good also in this sense.

The third function of higher education can be found in its service to the community. It is not very clear what serving the community exactly means. Cemmell (2002) describes it as 'the indirect and shared benefits of higher education'. These include things such as increased tolerance, enhancement of the democratic process, and empowerment of individuals. In this sense these benefits are certainly non-rival as well as non-excludable.

Serving the community, however, can also be interpreted in a more strict sense. Then it means the delivering of services against payment to third parties by persons linked to higher education institutions, whereby those persons use the knowledge they gathered at their institutions (e.g. consulting services). This kind of service is of course very rival and excludable.

Also in its third function higher education cannot be called a public good unconditionally.



The picture so far is that higher education has only limited aspects of a collective good. Non-rivalry and non-excludability are certainly not decisive characteristics of higher education in its three aspects of learning, knowledge creation and community servicing.

Nonetheless, there are some positive external effects involved that make the qualification of higher education as some quasi-collective good altogether not unreasonable and that therefore warrant some kind of government intervention in higher education.

The importance of spending on (higher) education and research and development for human capital and the relative failure of the private economy to invest in human capital calls for the need to supplement the efforts of the private sector through government.

The development of human capital is seen as one of the pillars of comparative advantages that countries can have in international trade. Since human capital is not a natural endowment but something that is the object of investment by individuals, the private sector and government, many governments take recourse to at least paying lip service to their commitment to human capital development.

Looking at the facts one can see government intervention in higher education in all of the developed world and in most of the less developed world.

The ambiguous character of (higher) education in terms of being a private or a public good is responsible for the paradox in the title of this paper. Depending on their interest countries stress the public or the private content of higher education.

#### *b. Higher education as an international public good*

To introduce the ‘international’ aspect into the discussion really means to introduce the geographical notion of public goods. Here it is important to leave administrative borders of jurisdictions initially out of the debate. Public goods do not tend to restrict themselves to these borders. It is better to envisage a continuum of ranges of public goods. These ranges usually do not correspond to jurisdictional boundaries; in fact there would be a need for plenty of different jurisdictions to cater for all the possible ranges in public goods. Because of the discrepancy between the range of public goods and the jurisdictions that supply them, there are spill over effects.

In the case of nationally funded higher education this would mean a spilling over of higher education over national borders into the international community. This could, for instance,

mean in practice that students from outside the jurisdiction of the paying government are enrolled in its higher education system.

In this case of spill over effects it might be considered supplying higher education at a supranational level (cf the Transnationale Universiteit Limburg (TUL), which is a cooperation between an Dutch and a Flemish university).

The key point here is of course that such a supranational kind of supply means that the lower jurisdictions have to hand over some autonomy to some sort of supranational body.

In the next paragraph we will consider this problem in the European higher education context.

## **2. European higher education: towards a regional public good?**

What does the foregoing mean for higher education in Europe?

Above it was stated that a well-educated population and a large stock of knowledge, both brought about by higher education, are a bonus for a country (or a group of countries for that matter). It is an important input factor for economic growth and thereby improves the standard of living.

For some decades now Europe has felt that it lags behind other countries, especially the United States. The project of the single market, put on the rails in the second half of the eighties, was meant as a response to the US and, at the time, Japanese economic supremacy, which meant higher growth rates and lower unemployment.

The drive towards an economic and monetary union that started with the Delors Report at the end of the eighties and ended – with reasonable success – at the turn of the century is another example of how Europe tried to catch up with the United States.

Still another example of this concern is the ambitious goal that was set by the European heads of government at the Lisbon summit in March 2001. This led to the start of the so-called Lisbon process.

During the nineties the idea grew in some quarters that part of the problem of a lagging Europe lay in the segmented, fragmented European higher education system. What was needed was a European Higher Education Area (EHEA).

The first efforts for this EHEA were not undertaken by the European Union itself but by a few university rectors who had gathered to celebrate the 800th anniversary of the Sorbonne University in Paris in 1998. The Sorbonne Declaration was followed by the Bologna

Declaration, in which some ministers of education were already involved. By now the Bologna 'Revolution' has reached some thirty European countries. The essence of the whole process is that 'It is a commitment freely taken by each signatory country to reform its own higher education system or systems in order to create overall convergence at European level. The Bologna Declaration is not a reform imposed upon national governments or higher education institutions. Any pressure individual countries and higher education institutions may feel from the Bologna process could only result from their ignoring increasingly common features or staying outside the mainstream of change. The process originates from the recognition that in spite of their valuable differences, European higher education systems are facing common internal and external challenges related to the growth and diversification of higher education, the employability of graduates, the shortage of skills in key areas, the expansion of private and transnational education, etc. The Declaration recognizes the value of coordinated reforms, compatible systems and common action (Bologna 2000).'

Hidden beneath the jargon we find here the characteristics of higher education as a (regional) collective good: individual countries are confronted with the fact that the wanted external effects of higher education are not sufficiently reached on the national level, whereby the hope is expressed that by tackling higher education on a higher level, economies of scale can be created so that positive external effects can be achieved after all.

The phrase 'regional collective good' has, within the context of European higher education, a specific significance (*sui generis*). It is too simple to state that the Bologna process just pushes one or more government level(s) upwards, from the national (c.q. sub national) level to the supranational level. The characteristics of European decision-making are too specific for that, and, furthermore, they vary according to the domain where the decision-making takes place. This European decision-making system is a complicated process involving various European institutions and member state governments where each plays their own role (role which can vary across decision-making areas). In most cases it is not easy to point at one single government level that is responsible for decision making (at least if we are not taking a purely formalistic point of view).

One can put the question whether this has consequences for the 'status' of public goods that are supplied through this kind of decision-making. Those public goods show a complicated, hybrid image, precisely because several layers of government are involved in their supply in an interactive way.

The picture of this kind of collective goods is further complicated if we introduce into the analysis the various modalities of supply (of course this remark also applies to 'national'

collective goods). From the moment we do not consider the most simple modality of supply whereby government assures service using its own people and means, we can almost automatically state that other organizations - private companies among them - are involved in the supply of collective goods, through subsidization, concession, contracting out, and so on.

Focusing on higher education in Europe, the Bologna process has the following institutional features:

- it meets the exigencies of the subsidiarity principle;
- there is an attempt at (re)capturing by the EU;
- from the subsidiarity principle it follows that another method must be used to proceed, this alternative method shows resemblances to the method of open coordination that is now being used in other areas of European unification;
- the result of the reform shows features of a European (although not restricted to the present and future member countries of the European Union) regional collective good.

#### *a. The subsidiarity principle*

Education does not fall under the competences of the European Union. That is why the initiative for the Bologna process did not come from the Commission. Inside the Union each member state carries, under the subsidiarity principle, the full autonomy and responsibility for the organisation of its educational systems and of the content of the curricula. This does not mean that Europe is entirely absent in education. According to articles 149 and 150 of the Treaty of establishing the European Community the Community has to contribute to 'the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity'. In doing so it will contribute to developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States, encouraging mobility of students and teachers, by encouraging *inter alia*, the academic recognition of diplomas and periods of study, promoting cooperation between educational establishments.

Thus the European Union does not have a task in developing and/or implementing a 'common policy' on education. The educational competences remain seated at the national or sub national level.

*b. The 'capture' by the EU*

At the Lisbon Summit (March 2000) the European leaders decided to transform Europe by 2010 into the most competitive and dynamic knowledge economy of the world, capable of sustainable economic growth with more and better jobs and more social cohesion. It is obvious that concerning the knowledge economy aspect higher education comes into the picture.

Under the umbrella of a European knowledge area, a key element of the Lisbon strategy has been to speed up the transition towards a knowledge-driven economy. Action has been shaped around a range of initiatives from eEurope and the creation of a European Research Area to promoting innovation and establishing common objectives at EU level for national education policies. This has been translated into targets such as, among others, increasing R&D spending with the aim of approaching 3% of GDP by 2010, removing obstacles to the mobility of researchers, attracting and retaining high-quality research talent in Europe, establishing national and joint research programmes on a voluntary basis around freely chosen objectives, developing an open method of co-ordination for national research policies, introducing better recognition of qualifications, promoting learning of EU languages and introducing a European dimension to education.

Without naming the Bologna process explicitly in the documents on the Lisbon process it is nevertheless clear that a takeover action by the European Union has been undertaken. The Bologna process has been incorporated into the Lisbon process. The links between what is happening in the Bologna process and the several aspects of education and research in the Lisbon process are all too clear. One can also point at the objective of the 6th Framework Programme for Research & Development, which for the period 2003-2008 endeavours to create a European research area.

The takeover bid by the European Union is not limited to the similarities in content of part of the Lisbon process and the Bologna process. It is also reflected in the question of who will be able to take the lead in the Bologna process.

At the moment, the question who leads the Bologna process is not so easy to answer. There is not a real centre of power and decision making. This is not surprising given the peculiarities

of European decision-making. One category of actors in this battle is the education ministers of the countries involved in the Bologna process. During the Conference of European Ministers responsible for Higher Education in Berlin on 18 - 19 September 2003 they tried to take the lead. But the Commission also claims this lead<sup>1</sup>, while the Conference of Rectors EUA and the conference of directors of institutions for higher education EURASHE try to throw their intellectual weight into the balance and also take a leading role. Another contender is the Council of Europe.

The European Council of Lisbon 2000 called for the EU Council of Ministers of Education to put forward its own programme for education and vocational training. On the basis of a Commission proposal and contributions from the Member States, the Council adopted the "Report on the concrete future objectives of education systems" on 12 February 2001. It is the first document to set out a coherent overall approach to national education policies in the context of the EU on the basis of three objectives:

- improving the quality and effectiveness of education and training systems in the European Union;
- making lifelong learning accessible to everyone;
- making our education and training systems more outward-looking with regards to the rest of the world.

This report was approved in March 2001 by the Stockholm European Council, which asked that a Detailed Work Programme be drawn up. This was adopted on 14 February 2002 and was the subject of a joint report transmitted by the Commission and the Council to the Barcelona European Council on 15 and 16 March 2002.

In the context of this working programme the activities of the Bologna process play an important role. Since the Barcelona European Council the implementation of the Bologna

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<sup>1</sup> The European Commission was granted a special status as a full member of the Follow-Up Group (all countries) and the smaller Preparatory Group for the Berlin 2003 conference. In November 2001, DG Education and Culture of the European Commission released a working document called *"From Prague to Berlin, the EU Contribution"*, outlining ten concrete measures the Commission would take in order to take the Bologna process further. In August 2002, a first *Progress Report* was distributed. This *Second Progress Report* was presented to the Bologna Follow-Up Group in Athens in February 2003, proving an update on steps already taken and work ahead towards a European Higher Education Area.

Declaration is no longer without a commitment for the European member states. It has become a concrete assignment as a contribution to the Lisbon process. This will further gain momentum when the majority of the Bologna partners have joined the European Union by May 2004 and that also the EFTA countries are involved.

So it is only a matter of time before the Bologna process will entirely be taken over by the European Union. At the moment the first inroads are being made.

One of those takeover actions involves the employment policy. There is now a link from Bologna to the European employment policy since article 44 of the conclusions of the Barcelona Council explicitly names the Bologna process and asks for results before the above mentioned ministerial Bologna Conference in Berlin. This means that the Council of Ministers of Education cannot allow itself not to work out something<sup>2</sup>.

Moreover, the preceding article 43 points explicitly to the need to situate these measures within the framework of the afore-mentioned 'objectives process' that was installed by the "Report on the concrete future objectives of education systems"

### *c. Open method of coordination*

Since the turn of the century one has been able to observe a rather hesitant start to what could become a new way of making European decisions, namely the open method of coordination. This method was first applied in the area of employment policy and was extended by the European Council of Lisbon to other domains. According to Radaelli (2003) the method of open coordination is characterized by the presence of:

- guidelines
- benchmarking and sharing of 'best practices'
- multilateral supervision
- indicators
- iterative process

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<sup>2</sup> "The European Council calls for further action in this field:

– to introduce instruments to ensure the transparency of diplomas and qualifications (ECTS, diploma and certificate supplements, European CV) and closer cooperation with regard to university degrees in the context of the Sorbonne-Bologna-Prague process prior to the Berlin meeting in 2003; similar action should be promoted in the area of vocational training; (...)"

- the practice of implementation through domestic policy and legislation (this means that no EU legislation is needed).

The Bologna process can be called an application *sui generis* of the open method of coordination. Each feature of the open method of coordination can be found in the Bologna process.

### Guidelines

One of the more visible aspects of the Bologna process is the introduction of the bachelor-master system. The quantitative aspects of this system are governed by the ECTS-points system (for instance, in Flanders 180 ECTS points for a bachelor degree and between 60 and 120 ECTS points for a master degree). These can be interpreted as guidelines. The same applies to the so called Dublin descriptors which state the competences that are supposed to be associated with bachelor and master degrees and which define key outcomes for Bachelors and Masters programmes. These descriptors act as some kind of qualitative guidelines.

When we zoom out from the specific Bologna Process to the wider European approach (the aforementioned Detailed Work Programme) we can see the same picture: the three strategic objectives ('improving the quality and effectiveness of education and training systems in the EU; facilitating the access of all to education and training systems; opening up education and training systems to the wider world') of the Programme are broken down into thirteen objectives and forty-two key issues reflecting the wide spectrum of areas related to education and training.

### Benchmarking/multilateral surveillance/indicators/iterative process

In 1999, 2001 and 2003 progress reports were being written to monitor the Bologna process. These reports have to map areas of convergence between the abovementioned systems in Europe (mainly EU/EEA), to identify trends affecting them and to indicate ways towards greater convergence in the future.

Through comparison of the progress made in the participating countries these reports act as benchmarks for these countries.

Two years after signing the Bologna Declaration (1999) and three years after the Sorbonne Declaration (1998), European Ministers in charge of higher education, representing 32 signatories, met in Prague on May 19<sup>th</sup>, 2001 in order to review the progress achieved and to



set directions and priorities for the coming years of the process. They repeated this exercise in Berlin on September 19<sup>th</sup> 2003.

#### Implementation through national policy and legislation

Each member state, or sub entity within a member state that is entrusted with education policy, retains full competences and ordains in which manner the commonly stated objectives will be pursued. The reform of higher education instigated by the Bologna process is done differently in the Netherlands than in Flanders. In Flanders Bologna is implemented in a different way from the French speaking Community in Belgium.

#### *d. Higher education not only as a European collective good, but also as a competition instrument*

As a result of the Bologna process higher education may no longer be supplied entirely on a national basis, and by streamlining these national bases higher education should obtain a European dimension. The rationale is that the external effects of such a massive scale enlargement through the method of open coordination are considered large enough to warrant political intervention. At the same time there is the paradoxical conviction that, through the Bologna process, higher education is receiving an injection of fresh competitiveness which should enable it to stand its ground in the world market of higher education against competitors from Anglo-Saxon countries.

The same paradox is reflected in a related movement that the European Union is currently concerned about, namely the discussion on the so-called services of general interest. At the moment some questioning on these services is going on inside the European Union by means of a Green Paper from the Commission.

The definition and status of the services of general interest such as they are put forward by the Green Paper are rather vague (Commission, 2003). The intention of the European Commission is to get an idea whether it is desirable to define these concepts better, inter alia because it would make it clearer whether the internal market rules are applicable to specific services of general interest (such as higher education). Some actors in the debate, especially those situated on the left of the political spectrum, are concerned that in this way the freedom of scope for governments with regards to these services of general interest could be seriously restricted.

Although education is at the time not mentioned explicitly and is actually only cited as an example, it is the kind of service which could be envisaged by the Commission, given that the pure public good character of higher education is not that significant.

In this way one can speak of a paradox: on the one hand the Commission is trying to take over the Bologna process, indicating that it recognizes its public good character; on the other hand the Commission is trying to expand internal market rules to part of the services of general interest, implicitly maybe also to higher education.

### **3. Higher education in the framework of GATS**

#### *a. Introduction*

Let us now consider this paradox from the other side, which is the side of liberalization of the international trade in services. Here the intention of liberalization is embodied in the General Agreement on Trade in Services (the GATS-agreement). GATS was agreed in the Uruguay Round (1987-94) and was meant to deregulate the markets in services.

The GATS defines four ways in which a service can be traded, known as "modes of supply":

- services supplied from one country to another (e.g. international on-line universities), officially known as "cross-border supply";
- consumers from one country making use of a service in another country (e.g. foreign students), officially known as "consumption abroad";
- a company from one country setting up subsidiaries or branches to provide services in another country (e.g. a university from one country setting up operations in another country), officially known as "commercial presence"; and
- individual persons travelling from their own country to supply services in another (e.g. a professor teaching abroad for a while), officially known as "movement of natural persons". (WTO 2001)

The GATS-agreement can be described as a voluntary agreement<sup>3</sup> (Knight, 2002, 9). Countries can decide which sectors they will agree to cover under GATS rules. This is done through the preparation of their national schedules of commitments and through the ‘request-offer’ negotiation rounds.

According to the WTO, the agreement is deemed to apply to all measures affecting services with the exception of “those services supplied in the exercise of governmental authority”<sup>4</sup>. The agreement states that “in the exercise of governmental authority” the service is provided on a ‘non-commercial basis’ and ‘not in competition’ with other service suppliers.

GATS is not a neutral agreement in the sense that it aims to promote and enforce the liberalization of trade in services. The process of progressive liberalization involves two aspects:

- extending GATS coverage to more service sectors and
- decreasing the number and extent of measures that serve as impediments to increased trade.

The impediments to trade in services are numerous (see chart 1).

Therefore, in spite of the right of each country to determine the extent of its commitments, with each new round of negotiations, countries are expected to add sectors or sub-sectors to their national schedules of commitments and to negotiate the further removal of limitations on market access and national treatment.

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<sup>3</sup> The aspect of progressive liberalization brings into question the voluntary nature of the agreement.

<sup>4</sup> Notice the analogy with the European Union’s ‘services of general interest’.

Chart 1: Barriers to trade by mode of supply

Modes of delivery	Barriers
<b>1. Cross border supply</b>  Examples -distance delivery or e-education -virtual universities	-inappropriate restrictions on electronic transmission of course materials -economic needs test on suppliers of these services -lack of opportunity to qualify as degree granting institution -required to use local partners -denial of permission to enter into and exit from joint ventures with local or non-local partners on voluntary basis -excessive fees/ taxes imposed on licensing or royalty payments -new barriers, electronic or legal for use of Internet to deliver education services -restrictions on use/import of educational materials
<b>2. Consumption abroad</b>  Example -students studying in another country	-visa requirements and costs -foreign currency and exchange requirements -recognition of prior qualifications from other countries -quotas on numbers of international students in total and at a particular institution -restrictions on employment while studying -recognition of new qualification by other countries
<b>3. Commercial presence</b>  Examples -branch or satellite campus -franchises -twinning arrangements	-inability to obtain national licenses to grant a qualification -limit on direct investment by education providers (equity ceilings) -nationality requirements -restrictions on recruitment of foreign teachers -government monopolies -high subsidization of local institutions -difficulty in obtaining authorization to establish facilities -economic needs test on suppliers of these services -prohibition of higher education, adult education and training services offered by foreign entities -measures requiring the use of a local partner -difficulty to gain permission to enter into and exit from joint ventures with local or non-
	local partners on voluntary basis -tax treatment that discriminates against foreign suppliers -foreign partners are treated less favourably than other organizations -excessive fees/ taxes are imposed on licensing or royalty payments -rules for twinning arrangements
<b>4. Presence of natural persons</b>  Examples - Teachers travelling to foreign country to teach	-immigration requirements -nationality or residence requirements -needs test -recognition of credentials -minimum requirements for local hiring are disproportionately high -personnel have difficulty obtaining authorization to enter and leave the country -quotas on number of temporary staff -repatriation of earnings is subject to excessively costly fees and/or taxes for currency conversion -employment rules -restrictions on use/import of educational materials to be used by foreign teacher/scholar

Source : Knight (2002, 14)

The education sector is one of the least committed sectors (WTO, 1998, Knight, 2002, 10). According to a background paper by the WTO Secretariat as of 1998 only 44 of the then 144 WTO Members had made commitments to education, and only 21 of these had included commitments to higher education. It is interesting to note that Congo, Lesotho, Jamaica and Sierra Leone have made full unconditional commitments in higher education, perhaps with the intent of encouraging foreign providers to help develop their educational systems. Australia's commitment for higher education covers provision of private tertiary education services, including university level. The European Union has included higher education in their schedule with clear limitations on all modes of trade except 'consumption abroad', which generally means foreign tuition paying students. At the moment only four countries with higher education commitments (USA, New Zealand, Australia, Japan) have submitted a negotiating proposal outlining their interests and issues.

*b. Public goods, higher education and GATS*

We can easily see that the discussion about the aspect 'supplied in the exercise of governmental authority' is on another level than the discussion on (international) public goods. The latter relates to the theoretical concepts of non-rivalry and non-excludability. In the GATS framework the criterion used to distinguish services that (could) fall under a liberalized regime or not is – at least in principle – easy to understand.

This does not mean that the practical criterion does not pose any problems.

As Larsen (2001, 17) states, education, along with health and other social services, is a politically sensitive sector for multilateral trade negotiations. Almost all countries view education, at least up to a certain age, as an essential social service and provide public-funded education on a compulsory and universal basis. There are variations between countries' education systems concerning the level of public funding and public delivery of education and the degree to which private education is available. Mixed systems, allowing the choice between public and private schooling, are common.

This specific situation entails a couple of problems:

- The co-existence of public and private services calls into question the status of public services as government services excluded from the scope of the GATS. GATS article I (3) (b) provides that the Agreement applies to "any service in any sector except

services supplied in the exercise of governmental authority". I 3 (c) provides that "any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers" is such a service.

- It is often asserted that in mixed education systems, the private sector "competes" with the public sector, thus bringing government-supplied services into the GATS arena. Co-existence of public and private providers is common in social services such as health and education. But such co-existence does not necessarily mean that they are "like services", nor that they are in competition, and therefore does not bring public services into the purview of the GATS. Nor does the fact that fees might be charged for some governmental services, e.g. for school enrolments, automatically make the service one supplied "on a commercial basis" (Larsen, 2001, 17).

As Knight (2002, 17) states "the increase in international trade may also involve a shift in government and public thinking- while higher education remains a "public good", both public and private providers can fulfill this public function. This in turn may introduce greater competition among providers and general confusion for the consumer. Hence a coherent and comprehensive regulatory framework is called for- to serve national interests and protect the interests of different stakeholders, especially students." The reference to a regulatory framework cannot be mistaken.

"Some of the barriers identified above affect internationalization initiatives, in other words, those activities that do not have an economic or for-profit motive. For instance, mobility of students and teachers for academic exchange or research purposes are affected by many of the barriers noted for supply modes two and four" (Knight, 2002, 15). These barriers emanate from the intervention of government in the supply of higher education and are in that way directly linked to its supposed public good character.

It is interesting to note that some of these same barriers to trade also are the impediments that the Bologna process wants to eliminate in order to transform higher education into a European public good.

This means that there is a similarity between the motives for Europe to engage in the Bologna process and the motives to liberalize the higher education market: similar barriers are at the origin of both tendencies.

#### **4. Concluding remarks**

The paradox that we took as the starting point for this paper seems to be omnipresent and is to be explained by the mixed character of higher education, combining public and private aspects.

In the viewpoint of the proponents of European higher education as a public good void of market considerations one can spot a certain inconsequence. You cannot stress the public good character of higher education, implying the need to give higher education a more European flavour, and at the same time stay firm on the idea that a European higher education system is needed in order to compete with the likes of the United States, Australia and New Zealand. In that sense the defenders of higher education as a national public good, the ngo's and other opponents to the Bologna process have a point.

One has to realize that the economization of higher education that seems to be inherent in the Bologna process as one of the sides of the stated paradox can have unexpected consequences.

The Bologna process is needed because European higher education seems to be losing ground in the worldwide competition with American, Australian and other suppliers of higher education products. This loss of ground is supposedly reducing future prospects for growth chances of the European economy as a decline in education leads to less scientific production and research, which affects economic growth negatively.

To turn around this evolution a concerted European effort, taking the form of the Bologna process, is then deemed necessary.

Let us suppose that European higher education is indeed lagging behind (a hypothesis that is not necessarily proven), what position should be taken then? How threatening would that be?

A possible approach here is to fall back on the economics of international trade. If the supply of imported educational products proves to be better than the domestically produced supply, the question is whether it is not to be preferred to take advantage of this, in the same way that we take advantage of the supply of good and cheap Japanese cars. Why should the theory of comparative advantage not be applied to higher education: let us buy elsewhere what can be produced relatively cheaper and better elsewhere and let us concentrate on the things that we are good at? In that way welfare is best served.

Especially obfuscating in the debate is the indistinctness about the position of the different participants in the discussion. Various stakeholders are involved. The rationale of the comparative advantage theory is built around the consumer position. His or her welfare is at stake. In higher education the consumers are in the first place the students. They want good

education at a good price. Who is supplying the goods, with what kind of capital is probably less interesting for them to know. The same reasoning should be valid for the buyers of the graduated students' services, being the demand side of the labour market.

Among the other stakeholders are the producers of higher education: the institutions and their staff. For them other interests are at stake. Financial flows and employment are involved here. It is a natural reaction for producers to stand up against competition using a varied array of actions: educational innovation, mergers and acquisitions, international cooperation, alternative sources of funding.

As afore-mentioned it was this category of stakeholders that took the initiative for the Bologna process in sending out the Sorbonne Declaration in 1998 and which is still playing an important role in monitoring the process.

Third stakeholder is government. The role of government in the Bologna process is unclear. In theory government should care for the societal interest, being the interest of the citizens present and future. These include the consumers of higher education. The prevailing impression, however, is that government is in the first place identifying with the producers of higher education. Governments feel compelled to defend their own educational sector against the outside world. This is a well-known phenomenon in the political economy of trade protection. Producers are much easier to identify for politicians than consumers; moreover, they are better organized and have therefore an advantage over consumers in lobbying government.

This leads to the intriguing question with which we want to conclude: to what extent does the creation of European higher education as a regional collective good relate to a genuine concern for the interests of the European citizens and to what extent does it relate to a defensive reaction by government under pressure of the European educational lobby to protect European higher education against the liberalization trend symbolized by GATS?



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